

Draft – February 3, 2003

**CONCEPT PAPER
Independent Scientific Review**

Purpose

The purpose of this paper is to develop a proposal for establishing the independent scientific review panel required by Section 601(j) of the Water Resources Development Act of 2000 (WRDA 2000) (Public Law 106-541) that was enacted on December 11, 2000. The Water Resources Development Act of 2000 authorized the Comprehensive Everglades Restoration Plan (CERP). The successful implementation of CERP requires that appropriate decisions be made about significant scientific and technical issues. These extremely technical, often controversial, issues will be presented in various reports and documents generated by numerous sources, including the Corps of Engineers, the South Florida Water Management District, Everglades National Park, the Fish and Wildlife Service, the Florida Fish and Wildlife Conservation Commission, and various Federal, State and local agencies. Independent scientific review will ensure that the decisions being made to implement CERP are based on appropriate data and sound science that is clearly presented to decision makers. The following proposal for the creation of an independent scientific review panel in accordance with WRDA 2000, seeks to facilitate this result.

Independent Scientific Review and CROGEE

Independent scientific review involves the review of scientific and technical issues by independent experts. It is intended to ensure that the resolution of highly complex issues is based upon the best available science. Congress has begun to require independent scientific review more frequently as a means of ensuring both neutrality and scientific accuracy in federal agency projects. The Army has embraced the concept of independent scientific review and used it in several scientifically complex projects such as salmon recovery in the Northwest.

Independent Scientific Review also has been utilized in the Everglades Restoration process. On February 3, 1999 the South Florida Ecosystem Restoration Task Force (Task Force) unanimously adopted a resolution that endorsed “*the establishment of an ongoing outside scientific review panel as being developed by the Task force as an essential component to ensure an effective adaptive management process for South Florida Ecosystem restoration.*” In fulfillment of the Task Force’s resolution, the National Academy of Sciences (NAS), acting through the National Research Council (NRC), entered into a five-year cooperative agreement with the Department of Interior on September 17, 1999 to establish the Committee on Restoration of the Greater Everglades Ecosystem (CROGEE). The cooperative agreement provides that the Committee will provide scientific advice to the Task Force and its member agencies and that the Committee will review and make recommendations on the scientific and technical aspects and elements relating to the South Florida ecosystem. CROGEE is funded by the Department of the Interior and receives its direction from the Task Force. CROGEE

prepares a work plan that describes the items that they plan to accomplish for approval by the Task force. The Corps of Engineers has a Memorandum of Agreement (MOA) with the Department of the Interior to utilize CROGEE for independent scientific reviews.

WRDA 2000 Requirements for Independent Scientific Review

CROGEE was created primarily as a tool to provide the Task Force with scientific advice; whereas WRDA 2000 calls for the creation of an independent scientific review panel that reviews the Plan's progress toward achieving the natural system restoration goals of the Plan and requires that the panel produce a biennial report for Congress, the Secretary of the Army, Secretary of the Interior, and the Governor of Florida.

Section 601(j) of WRDA 2000 specifically calls for independent scientific review and reporting, as follows:

(j) Independent Scientific Review. –

(1) IN GENERAL. – The Secretary, the Secretary of the Interior, and the Governor, in consultation with the South Florida Ecosystem Restoration Task Force, shall establish an independent scientific review panel convened by a body, such as the National Academy of Sciences, to review the Plan's progress toward achieving the natural system restoration goals of the Plan.

(2) REPORT. – The panel described in paragraph (1) shall produce a biennial report to Congress, the Secretary, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

The Senate Report on the Water Resources Development Act of 2000, prepared by the Senate Committee on Environment and Public Works (Report 106-362), provides discussion about independent scientific review:

Subsection (j) directs the Secretary, the Secretary of the Interior, and the State, in consultation with the South Florida Ecosystem Restoration Task Force, to establish an independent scientific panel to conduct on-going review of the progress achieved by the Plan's execution in attaining the restoration goals of the Plan. The panel is to be convened by a body, such as the National Academy of Sciences, with expertise in assembling panels for the purpose of conducting independent scientific reviews.

The committee expects the body convening the review panel to use established practices for assuring the independence of members employed in this instance. This includes assuring that neither panel members, nor the institutions they represent, have a vested interest in the outcome of the scientific review or the execution of the Plan. The committee also expects the review panel to contain individuals reflecting a balance of the knowledge, training, and experience suitable to comprehensively review and assess the Plan's progress toward achieving restoration goals. The committee believes that members of the review panel should have expertise in applicable scientific disciplines and include individuals possessing specific scientific experience with, and knowledge of, the South Florida ecosystem. This subsection is not intended to necessarily preclude

the National Research Council's Committee on Restoration of the Greater Everglades Ecosystem, either in part or in full, from assuming the specified duties of the independent scientific review panel.

The panel is directed to produce a biennial report and submit its findings to Congress, the Secretary, the Secretary of the Interior, and the State of Florida. The committee intends for these reports to address the Plan's progress toward achieving the restoration goals of the Plan on a biennial basis. The panel is directed to include in each report an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

Programmatic Regulations Requirements for Independent Scientific Review

The Secretary of the Army, with the concurrence of the Secretary of the Interior and the Governor, is required to promulgate programmatic regulations that provide a process for ensuring that the goals and purposes of the Comprehensive Everglades Restoration Plan are achieved. The proposed rule, which was published in the Federal Register on August 2, 2002, states that the Secretary of the Army, the Secretary of the Interior, and the Governor, in cooperation with the Task Force, will establish the independent scientific review panel as required by Section 601(j) and prepare the agreements, procedures, and guidance necessary to establish the panel and to provide for its funding and operation. The proposed rule also provides that the panel is to be provided with the opportunity to review draft Pilot Project Technical Reports and draft assessment reports prepared as part of the adaptive management program.

Establishing the Independent Scientific Review Panel

In accordance with the provisions of Section 601(j) and the programmatic regulations, it is the intent of the Department of the Army to establish an independent scientific review panel to review the Comprehensive Everglades Restoration Plan's progress toward achieving the natural system restoration goals of the Plan and to produce a biennial report to Congress, the Secretary of the Army, the Secretary of the Interior, and the Governor that includes an assessment of ecological indicators and other measures of progress in restoring the ecology of the natural system, based on the Plan.

The Department of the Army believes that the independent scientific review and Congressional reporting requirements of WRDA 2000 can best be met through a separate agreement with the National Academy of Sciences. This agreement will recognize that the evaluation and reporting tasks envisioned in WRDA 2000 are to be accomplished independently of any ongoing or future reviews by CROGEE or any other entity. Accordingly, the Department of the Army proposes that the Secretary of the Army, the Secretary of the Interior, and the Governor enter into a five-year agreement, with options for extensions in 5-year increments, with the National Academy of Sciences to establish the independent scientific review panel required by WRDA 2000. This agreement will include a scope of work, identify the specific products the panel is to produce, and establish the parties' understandings on how the panel's findings and biennial report will be disseminated among the parties to the agreement and to others. Before final establishment of the panel by the NAS, the Department of the Army, Department of

Interior, and the State will be afforded the opportunity to review the list of proposed panel members.

In addition, the agreement will recognize that the Department of the Army, the Department of the Interior, and the State retain the right and ability to establish other independent scientific review panels or peer review panels when deemed necessary by those agencies for conducting specific scientific and technical reviews.

WRDA 2000 provides very specific direction that the panel is “*to review the Plan’s progress toward achieving the natural system restoration goals of the Plan.*” This specific requirement will be the focus of the agreement and will serve to ensure that the panel stays focused on this mission and does not become involved in extraneous work items.

The Department of the Army, the Department of the Interior, and the State of Florida will share the panel’s costs. The Department of the Army and the Department of the Interior will enter into a separate MOA that will specify how the agencies will pay these costs. The State’s share will be accounted for in the design agreement between the Corps of Engineers and the South Florida Water Management District. This agreement envisions that the State and the Corps will share all design related costs on a 50/50 basis.